

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAMIEON S. FLOWERS,	§	
	§	No. 15, 2012
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0512001983
Appellee.	§	

Submitted: April 20, 2012

Decided: July 12, 2012

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

O R D E R

This 12th day of July 2012, upon consideration of the parties' briefs and the Superior Court record, it appears to the Court that:

(1) The appellant, Damieon S. Flowers, filed this appeal from a sentence imposed on a violation of probation (VOP). We conclude that there is no merit to the appeal and affirm.

(2) Flowers was arrested on December 6, 2005 and charged by information in January 2006 with several drug offenses, including Trafficking in Cocaine (hereinafter "Traff/Coc"). At the time of his arrest, Flowers was on probation arising from a September 2005 conviction for Distribution of Cocaine within 300

Feet of a Park (hereinafter “Dist/Coc”). As a result of his December 2005 arrest, Flowers was charged with VOP with respect to the Dist/Coc conviction.

(3) On January 31, 2006, Flowers pled guilty to Traff/Coc and the Dist/Coc VOP. For Traff/Coc, Flowers was sentenced to eight years at Level V (two years minimum mandatory), suspended after three years for two years at Level IV work release, suspended after six months for eighteen months at Level III. For the Dist/Coc VOP, Flowers was sentenced to three years at Level V, suspended after two years for the balance at Level III probation.

(4) Flowers was next arrested on October 3, 2011 and indicted in November 2011 for several offenses, including Resisting Arrest. As a result of his October 2011 arrest, Flowers was charged with VOP for both Traff/Coc and Dist/Coc. On November 16, 2011, Flowers pled guilty to Resisting Arrest and was found guilty on the Traff/Coc and Dist/Coc VOPs.

(5) On December 11, 2011, Flowers was sentenced on the Traff/Coc VOP to eighteen months at Level V. He was discharged as unimproved on the Dist/Coc VOP. For Resisting Arrest, Flowers was sentenced to one year at Level V, suspended for one year at Level III.

(6) Flowers filed this appeal from the eighteenth-month sentence imposed for the Traff/Coc VOP. Flowers claims that the sentence exceeds the maximum allowed by law.

(7) When a VOP is established, Delaware law authorizes the Superior Court to impose the full amount of the violator's suspended sentence or any lesser sentence.¹ This Court will not overturn a sentence imposed by the Superior Court unless it is beyond the maximum allowed by law or is the result of vindictive or arbitrary action on the part of the sentencing judge.²

(8) Having carefully considered the parties' briefs and the Superior Court record, we conclude that the Superior Court's judgment must be affirmed. Flowers has presented no evidence that the eighteen-month sentence imposed on the Traff/Coc VOP was the result of vindictiveness or arbitrariness or that the sentence exceeded the Level V time remaining on the original eight-year sentence imposed on January 31, 2006.³

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

¹ Del. Code Ann. tit. 11, § 4334(c) (2007).

² *Hitchens v. State*, 2007 WL 2229020 (Del. Supr.) (citing *Mayes v. State*, 604 A.2d 839 (Del. 1992)).

³ The history of incarceration provided by the State suggests that the Superior Court could have sentenced Flowers up to five years at Level V when imposing the eighteen-month sentence on December 11, 2011 on the Traff/Coc VOP.